

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

**ORIGINAL
-RECEIVED**

OCT - 2 1996

In the Matter of:

Grandfathered Short-Spaced
FM Stations

)
)
)
)

MM Docket No. 96-120
RM-7651

Federal Communications Commission
Office of Secretary

DOCKET FILE COPY ORIGINAL

To: The Commission - Mail Stop 1170

REPLY COMMENTS OF THE LIVINGSTON RADIO COMPANY

Introduction

1. The Livingston Radio Company ("Livingston") submits these reply comments in response to the Commission's *Notice of Proposed Rule Making* ("NPRM") and the comments filed in this proceeding.^{1/} Livingston is the licensee of Station WHMI-FM, Howell, Michigan. WHMI-FM is not a pre-1964 grandfathered station but is a Class A station that has been prevented from increasing its effective radiated power to the normal 6 kW maximum for its class because of short-spacing to second- and third-adjacent channel Class B stations. This handicap prevents WHMI-FM from adequately serving parts of its home county, Livingston County, Michigan, within its 1 mV/m primary service contour, even though WHMI-FM is the only broadcast station of any kind licensed to or located in any community in the entire county. Livingston filed comments in this proceeding urging the Commission to eliminate second- and

^{1/} FCC 96-236, released June 14, 1996. Comments were due July 22, 1996.

No. of Copies rec'd
List ABCDE

049

third-adjacent channel restrictions on facilities improvements by grandfathered short-spaced stations but not to limit relief to pre-1964 situations.

Elimination of Second- and Third-Channel Restrictions

2. The overwhelming support demonstrated by the comments filed in this proceeding clearly indicates the merit of the proposal to eliminate restrictions on second- and third-adjacent channel spacing restrictions on grandfathered short-spaced stations. The commenters supporting such a proposal include a wide range of industry participants, including professional engineers, associations, owners of multiple stations, and owners of individual stations.

3. The National Association of Broadcasters ("NAB") is the only commenter which supports the elimination of the second- and third-adjacent channel spacing requirements less than enthusiastically, but even the NAB did not actually oppose the proposal. Rather, they stated only that studies should be made, and they indicated that they would undertake such studies. While Livingston will review those studies when they are submitted, the fact remains that a large number of very competent and respected professional engineering firms have wholeheartedly supported the proposal without seeing the need for tests. Livingston's own experience over many years confirms that the impact of improved technology justifies a rule change and that further studies will only delay the grant of much-needed relief to grandfathered short-spaced stations.^{2/} There is ample basis in the record for adopting the proposals now, and every day

^{2/} Livingston respectfully submits that the NAB of necessity must orient its position toward the large stations that occupy board seats and other leadership positions within that organization and that in this particular proceeding, the NAB's position should not carry substantial weight. Representatives of Livingston have participated in recent discussions among parties supporting
(continued...)

that goes by without adopting the rule is a day when the public does not receive service it could otherwise receive.

Scope of Grandfathering Stations

4. Livingston continues to urge the Commission not to limit the class of stations to which relief is granted to just pre-1964 grandfathered stations, because these are not the only stations that have been caught in traps created by rule changes that occurred after they were constructed. Like pre-1964 stations, WHMI-FM was constructed in full conformance with the Commission's Rules, and WHMI-FM has never moved its transmitter site and so did not cause the problems it has encountered. It needs relief just as much as older stations do.

5. Many other parties, including respected professional engineering firms, support expansion of the class of stations that may benefit from the proposed rule change.^{3/} These comments clearly reflect how many stations face the kind of problem that WHMI-FM faces, through no fault of their own, and the importance of granting relief to post-1964 grandfathered stations.

6. There is no reason why relief should be limited to only pre-1964 stations. Livingston believes that a reasonable explanation for the restriction may be that the "Joint Petition" that

2/(...continued)

the proposals, and Livingston believes that it will not be long before even the largest group FM station owners come to realize the serious threat the existing rule poses to their stations if television station owners who lease space to FM stations terminate their leases to make space for digital television antennas.

3/ See comments of Richard L. Harvey, WTUC; Wayne S. Reese, E. Harold Munn, Jr. & Associates, Inc.; Charles I. Gallagher, P.E.; and, John J. Mullaney, Mullaney Engineering, Inc.

stimulated this proceeding was filed on February 1, 1991, which was not long enough after adoption of the metrification rules that victimized WHMI-FM and others in 1987 for the full impact of those rules to be discovered. Since the laws of physics are the same for all stations, there is no reason why all grandfathered stations should not be included in the proposal.

Co-Channel Protection of the 1.0 mV/m Contour

7. Livingston commends and supports Mullaney Engineering's suggestion to strictly use a uniform 1.0 mV/m contour for all FM station classes.^{4/} As Mullaney Engineering points out, protection of the 0.5 mV/m contour for Class B (0.7 mV/m for Class B1) facilities disadvantages Class A facilities by unnecessarily making Class A station improvements more difficult. There is no longer good reason for what is in effect favoritism toward Class B stations. As the population continues to flow to more rural areas, Class B stations obviously wish to retain their markets by enlarging their service areas. However, the Class A stations that often serve the smaller cities and towns where populations are growing are just as important, if not more so, to the public welfare. When stations such as WHMI-FM cannot serve their home county properly, it is time to take another look at what is being protected and why.^{5/}

8. Numerous comments were submitted by other short-spaced stations which have had to deal with restrictions and handicaps similar to those experienced by WHMI-FM. These stations have described problems with poor reception and interference, temperature inversions,

^{4/} See comments of Mullaney Engineering, Inc., p. 4.

^{5/} The restriction on WHMI-FM benefits second-adjacent WDRQ (formerly WLTI), Detroit, Michigan, which is an urban station whose programming is for all practical purposes irrelevant to the local needs of Livingston County.

and building penetration problems, which often impede their ability to provide service to their own communities or counties where they are licensed and have resulted in numerous complaints and loss of listeners. The result is discrimination against Class A stations which bump elbows with the larger and more powerful Class B stations -- a bias that it is time to eliminate.

Conservation of Commission Resources

9. Several commenters point out that adoption of the proposals will lessen burdens on Commission resources. Burdens on licensees will also be lessened. After six years of trying every way it knew how, in 1995 WHMI-FM finally dropped its effort to obtain a power increase only because it could no longer sustain the effort and expense of the fight. Many other commenters describe situations where they have filed applications which have been pending for years. Applications for moving or enhancing facilities require great amounts of Commission resources to analyze and evaluate. Where the burden can be eliminated by simplifying rules, without any cognizable interference or degradation of service, the Commission should act.

Conclusion

10. The proposals in this proceeding, if expanded to include all grandfathered short-spaced stations, present a great opportunity to bring the Commission's Rules up to date with modern technology and to eliminate undesirable imbalances in the existing rules. Greater flexibility will be afforded for stations of all classes to be competitive in today's market and to provide better service to the public, with no down side in terms of degraded reception by the public. There is no need to delay pending further study. There has already been too much

delay, and there is a more-than-adequate record of support by experienced professionals and licensees to justify immediate action.

Gregory P. Jablonski, President
The Livingston Radio Company
P.O. Box 935
Howell, MI 48844
Tel. 517-546-0860

Respectfully submitted,


Peter Tannenwald


Michelle A. McClure

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, D.C. 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

October 2, 1996